IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, 20TH JULY, 2007/29TH ASHADHA, 1929

WP(C).No. 2311 of 2007(A)

PETITIONERS:

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1. A.K. MOHAMMED AMANULLAH,
AGED 29 YEARS, S/O.ABOOBACKER,
AILAKKARA HOUSE, ALANALLOORE P.O.,
MANNARKAD, PALAKKAD DISTRICT.

2. MOHAMMED ASARAF P., AGED 26 YEARS,
S/O.RAYINKUTTY P., CHAKKUMTHODI HOUSE,
MUNDAKULAM, MUTTUPARAMBU P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.ESM.KABEER

RESPONDENT:

THE KERALA PUBLIC SERVICE
COMMISSION REPRESENTED BY ITS SECRETARY,
PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.3.2007, THE COURT ON 20/07/2007 DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 2311 OF 2007 A

Dated this the 20th July 2007

JUDGMENT

Case of the petitioners, in brief, is as follows:

The respondent, Public Service Commission invited applications for the post of HSST (Sociology) vide Ext.P1 Notification. The qualifications mentioned therein are:

1) Master's Degree with not less than fifty per cent marks acquired in the concerned Faculty in any of the Universities in Kerala.

2) Regular B.Ed. Degree or equivalent qualification acquired from any of the Universities in Kerala.

First petitioner possesses B.A. and B.Ed. in Social Science and M.A. in Sociology with first class. He is the third rank holder in M.Ed. Second Semester Examination. He has also passed the State Eligibility Test. Second petitioner also possesses B.Ed. in Social Studies with First Class and M.A. in Sociology with First Class besides having passed SET. Petitioners made applications

pursuant to Ext.P1 and they were issued with Admission Tickets and they were also called for the interview in which they successfully participated. They participated in the interview without any objection from the respondent. Ext.P10 is the rank list published, but withholding the results of the petitioners as Sl. No.8 and 9. The Public Service Commission replied on enquiry stating that as both the petitioners are not possessing SSLC qualification, they are not entitled for inclusion in the main list. It is their case that it is only due to poverty and the hardships that they could not complete their School studies. They submitted Exts.P11(1) and P11(2) representations before the Commission. It is their case that they are fully qualified. It is stated that the fact that they have not passed SSLC is not a ground as they are fully qualified. It is their contention that there is no provision in the PSC Rules that for every appointment of school teacher, SSLC qualification is mandatory and they have the required and prescribed qualifications as per Ext.P1 Notification. They seek a mandamus to the respondent

to publish the results without delay and to direct the respondent to appoint them as HSST. Further, they seek a declaration that they are entitled to publication of the results and appointment as HSST based on PSC Notification.

2. A Counter Affidavit is filed on behalf of the respondent, inter alia, stating as follows:

> *"As per the Notification, qualification prescribed for the post are as follows:*
>
> *1. Master's Degree in the concerned subject with not less than 50% marks from any of the Universities in Kerala or a qualification recognised as equivalent thereto in the respective subject by a University in Kerala.*
>
> *2. (i) B.Ed. in the concerned subject acquired after a regular course of study from any of the Universities in Kerala or a qualification recognised as equivalent thereto by any Universities in Kerala.*
>
> *(ii) In the absence of persons with B.*

Ed. Degree in the concerned subject, B. Ed. Degree acquired in the concerned faculty as specified in the Acts and Statutes of any of the Universities in Kerala.

(iii) In the absence of persons with B. Ed. Degree as specified in items (i) and (ii) above, person with B. Ed. Degree in any subject acquired after a regular course of study from any of the Universities in Kerala or a qualification recognised as equivalent thereto by any of the Universities in Kerala.

3. Must have possessed the SET for the post of Higher Secondary School Teacher conducted by Government of Kerala or by the agency authorised by the State Government.

Note: (i) In the absence of B.Ed. Degree holders, candidates having Master's Degree with not less than 50% marks and who have passed the SET will be considered. Preference will be given to those who have acquired the Ph.D. M.Phil. Degree or qualified at Junior

> *Research Fellowship National Eligibility Test. The teachers appointed under this provision will have to acquire B.Ed. Degree at their own expense within 5 years from the date of entry in service.*
>
> *(2) Persons who have acquired M.Ed. In the subject concerned recognised by the Universities in Kerala are exempted from B.Ed. qualifications."*

It is stated further that though the petitioners are Post Graduate Degree holders with B.Ed. and SET, the basic qualification of first petitioner is only VIIIth Standard and of the second petitioner is Vth Standard. It is stated that selection and appointment is to the post of HSST and he should have in depth knowledge in the Subject and for that he should basically acquire the SSLC, Pre Degree, Degree and thereafter Post Graduate Degree which are the different layers of qualification. Appointing a person with general qualification only upto VIIIth and Vth Standards for teaching in higher secondary level, is a

level at no point of time the petitioners have studied will be acting in violation of the Rules and the accepted norms prescribed for appointing a person. It is stated that the Commission has considered the entire aspects on the matter and decided that only candidates who have undergone the 10+2+3 pattern before acquiring Post Graduation need to be considered for selection. It is their case that the reading of the Rules positively indicates that Post Graduation is one to be acquired after a regular course of study. It is the Commission's case that it has the power to restrict the zone of consideration, even from among qualified candidates. It is their case that when a candidate has acquired Post Graduation without SSLC, Pre Degree, Degree system and a candidate has undergone all these before obtaining the Post Graduation is well distinguishable and a different class altogether. It is stated that as there are large number of candidates available with the prescribed qualifications, the Commission decided to restrict the zone of consideration. Better academic interest of the students was the

aim of the decision taken by the Commission, it is stated.

3. Heard Shri E.S.M. Kabeer, learned counsel for the petitioners and Shri P.C. Sasidharan, learned standing counsel for the Public Service Commission. Counsel for petitioners reiterated the contentions in the Writ Petition. He also relied on the following decisions:

1) Mujeeb Rahman v. State of Kerala (2005 (1) KLT 680).

2) Mukesh v. State of Kerala (2006 (3) KLT 63) and the unreported decision of a learned Single Judge of this Court in W.P.(C). No.15755/06A.

Learned standing counsel for the Public Service Commission relied on the following decisions:

1) Prathapan v. Registrar of High Court of Kerala (1984 KLT 625).

2) Dr. Krushna Chandra Sahu and Others v. State of Orissa and Others ((1995) 6 SCC 1).

3) Mohd. Riazul Usman Gani And Others v. District & Sessions Judge, Nagpur & Others ((2000) 2 SCC 606)

4. In Mujeeb Rahman v. State of Kerala (2005 (1) KLT 680), a Division Bench of this Court has taken the following view:

> *"Higher Secondary Education State Service Rules, 2001 make no distinction between M.A. Degree obtained through regular course of study and through distant education. Rule only stipulates that M.A. Degree recognised as equivalent by any of the Universities in the State of Kerala. Rule making authority, Government of Kerala also have not taken a different stand and hence the Public Service Commission is bound to treat the candidates who have obtained M.A. Degree through regular course as well as those who have obtained M.A. Degree through correspondence course as equal provided these qualification has been recognised by any of the Universities in the State of Kerala. Applications of the petitioners shall not be rejected for the reason that they have obtained Master's Degree through correspondence course provided those degrees have also been recognised by any of the Universities in the State of Kerala."*

In Mukesh v. State of Kerala (2006 (3) KLT 63), a learned Single Judge of this Court took the following view:

> *"The Public Service Commission is, of course, empowered by R. 13 of Part II, KS & SSR to decide, what are the qualifications equivalent to the qualifications prescribed in the Special Rules. But, it has to take a decision regarding the equivalent qualifications, before the notification is issued and they should be specified in the notification or at least the PSC should say in the notification that the applications of persons having equivalent qualification also will be considered, so that a person thinking that he is having equivalent qualification, can also apply. In this case, there may be several candidates, having Degree or Diploma in Sociology. They may not apply, going by Ext.P1 notification."*

In Prathapan v. Registrar of High Court of Kerala (1984 KLT 625), a Division Bench of this Court had to consider whether the stand taken by the High Court by which it had narrowed down the field of choice by eliminating third class Graduates from

scrutiny to minimize the difficulties of screening and to secure the better level of talent for the High Court service was justified. The Rules prescribed the qualification of Degree of a University in Arts or Science or Commerce besides special qualifications. It was in the context of the same that the Court held that Notification calling applications only from first class and second class Graduates involve no modification of the statutory Rules or the qualifications prescribed by the Statutory Rules, and that it lays down only a process for screening the candidates by narrowing the field of choice. The Court took note of the fact that there were enough applications from candidates who had requisite qualifications in terms of Ext.P1. The Court proceeded to draw support from two decisions of the Gujarat High Court and Punjab & Haryana High Court. In the decision of the Gujarat High Court, the Court took the view that it was competent for the appointing authority demarcating its field of choice.

5. In Sobha Menon v. Public Service Commission (1994

(1) KLT 986), a learned Single Judge of this Court took the view that when none of the applicants had the qualifications prescribed in the Notification, the question could not be considered whether they possessed a qualification which could be treated as equivalent to the notified qualification. The Court found that the procedure adopted by the PSC after the Notification and submission of applications by undertaking the exercise for finding out whether any of the applicants had equivalent qualifications to the notified qualifications would be arbitrary and unjustified. In Dr. Krushna Chandra Sahu And Others v. State of Orissa and Others ((1995) 6 SCC 1), the case related to the appointment of Junior Teachers in Orissa State Homoeopathic Medical Colleges. The Apex Court held, inter alia, as follows:

> *"38. A candidate in order to be suitable for appointment on a teaching post must have at least three qualities: he should have thorough knowledge of the subject concerned: he should be organised in*

> *his thoughts and he should possess the art of presentation of his thoughts to the students."*

In Mohd. Riazul Usman Gani And Others v. District & Sessons Judge, Nagpur and Others ((2000) 2 SCC 606), in response to an advertisement for filling up sixtysix posts of Peons in the District & Sessions Court, there were nearly 15000 applications. The qualification prescribed was pass in Examination of Standard IV in the regional language. This was the requisite minimum qualification. Apprehending that the applicants possessing higher qualifications might not take proper interest in the works of Peons, the Advisory Committee decided to call for interview only those candidates who possessed the requisite minimum qualification, and not those who possessed higher qualifications. The Court took the view that the criteria for short-listing the candidates was defective. However, taking note of the fact that the selection process was completed and the selectees were posted, the Court left the appointments undisturbed and only quashed the criterion. The Court held as follows:

> *"13. Laying of criteria when there are a large number of candidates is permissible but that criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made."*

6. There is no condition in the Notification issued by the Commission to contend that Post Graduation must be preceded by the candidate passing the SSLC, Pre Degree and Graduation. The qualification prescribed is only possession of Post Graduation with 50 per cent marks, possession of SET and B.Ed. as more elaborately referred to by me earlier. The prescription of the qualification is in tune with the Special Rules also. Undoubtedly, the post in question is a teaching post. Petitioners have not passed SSLC. They have also not undergone the Pre Degree Course. They are Graduates who have subsequently acquired Post Graduation. Of course, the PSC is concerned with the selection of the very best among the

candidates. However, would it be open to the PSC to insist upon possession of a qualification which was not mentioned in the Rules or in the Notification **?** As already noted, possession of SSLC is not specifically mentioned. No doubt, one way of looking at it is that when the prescribed qualification is M.A., it is inherently understood that it should be preceded by a candidate having successfully undergone the SSLC Course and thereafter proceeded to pass the Pre Degree or Plus II, Graduation and ultimately acquired the Post Graduate Degree. This is in the context of the requirements of a teaching post. However, it is to be noted that the PSC is not the appointing authority.

7. Rule 5 of the PSC Rules of Procedure relates to a situation where interview alone is to be conducted. It, inter alia, provides that where the number of qualified applicants are unduly large having regard to the number of vacancies, the Commission may restrict the number of candidates to be called for the interview, to such an extent as they may decide, after

conducting any examination as they deem fit. It also provides that higher qualifications and higher marks can be the basis for restricting the number of candidates to be called for the oral test/interview. In this case, the petitioners were in fact called for the interview. It is only when the matter reached the stage of publication of rank list, their results are withheld. So, I do not think that this is a case where the Commission can draw support from the right to restrict the number of candidates on the basis of the available powers. The principle based on which this Court has taken the view that M.A. Degree passed through correspondence and Post Graduation in a regular study cannot be distinguished for the purpose of qualification, advances petitioners' claim. I would think that having provided for Post Graduation, besides certain other qualifications and if the petitioners fulfill the prescribed qualifications, it may not be open to the Commission to contend that the petitioners who were in fact called for the interview also should be ousted at the stage of drawing up the rank list on the ground that they do not

possess SSLC and Pre Degree. What the Rules contemplate is that they should be in possession of Post Graduation. Petitioners are possessed of Post Graduate Degree with First Class, in fact, from the Calicut University, which is a University in the State of Kerala. While it should be vouch-safed all legitimately available powers for carrying out its duties, it would be hazardous to vest the Commission with the power to insist upon the candidate possessing a qualification which is neither expressly mentioned in the Special Rules, nor in the Notification issued by the Commission. In such circumstances, I would think that the petitioners are entitled to succeed and they are entitled to have their results declared. Accordingly, the Writ Petition is allowed and there will be a direction to the respondent to publish the results of the petitioners without any delay.

K. M. JOSEPH, JUDGE

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